



June 9, 2022

Robert E. Brann
941.724.1936
robert.brann@wilsonelser.com

Hon. Jesse M. Furman, U.S.D.J.
United States District Court – S.D.N.Y.
40 Centre Street, Room 2202
New York, New York 10007

RE: *Sample v. American National Red Cross, et al.*
Docket No.: 1:21-cv-02005-JMF

Your Honor:

This firm represents defendant American National Red Cross (“Red Cross”), s/h/a The American National Red Cross and American Red Cross in Greater New York, with respect to the above-referenced matter. We submit the herein joint status letter in accordance with the directives set forth in the Fourth Revised Civil Case Management Plan and Scheduling Order (Document No. 58) and upon the consent of all attorneys for the parties herein.

At the outset, and in response to the Order issued by the Court on June 7, 2022 (Document No. 76), the parties collectively agree that a conference is not needed on June 15, 2022 for the reasons set forth below.

(1) Existing deadlines, due dates, and/or cut-off dates:

The fact discovery deadline expired on June 6, 2022 [*see*, Document No. 61] however, pursuant to your Honor’s 5/31/22 Order [*see*, Document No. 74] plaintiff was ordered to appear for the remainder of her deposition – to be conducted on a date agreed upon by counsel – no later than June 9, 2022. Counsel agreed to hold the deposition on June 8, 2022 and, as explained in detail below, plaintiff, yet again, failed to appear. As your Honor may recall, defendants also scheduled, and noticed, plaintiff’s IME for June 6, 2022. Plaintiff also failed to show up for the IME.

The current expert discovery deadline is July 12, 2022. Defendants, under separate cover, will be renewing their request for dismissal of the case on the basis of plaintiff’s failure to comply with multiple Court orders and failure to prosecute the action but, to the extent that said relief is not granted, defendants request a telephone conference with the Court to discuss an extension of this deadline. As plaintiff did not appear for her IME and did not appear for the remainder of her deposition (which would have largely addressed her claims related to damages), the parties have not met and conferred on a schedule for expert disclosures. Defendants contend they will be extremely prejudiced in having to comply with an expert discovery deadline of July 12, 2022 given the recent developments in the case.

(2) **Outstanding motions:**

Red Cross intends to file a renewed letter motion seeking dismissal of the action based upon the plaintiff's continued non-compliance with the Court's multiple Orders shortly after the filing of this letter. Plaintiff's counsel may consider renewing his motion to withdraw as counsel in accordance with the prior order of the Court based upon plaintiff's continued failure to appear for the balance of her continued deposition and for her independent medical examination as set forth herein. However, at present, there are no outstanding motions.

(3) **Status of discovery and additional discovery needed:**

The plaintiff failed to appear for her IME on June 6, 2022. Furthermore, she failed to appear for her continued deposition on June 8, 2022. In accordance with the Court's previous directives, both defendants (Red Cross and ServiceMaster) appeared for their depositions on June 1, 2022 and June 3, 2022, respectively. As noted above, expert discovery needs to be completed but given the unexpected path this case has taken, the parties have not yet engaged in expert discovery.

(4) **Prior settlement discussions:**

While plaintiff, Red Cross and ServiceMaster attended a pre-settlement conference on December 13, 2021 before Magistrate Judge Ona T. Wang, the parties never actually participated in a continued settlement conference. This preceded Red Cross' current counsel's appearance in the case but we understand this may have had to do with the impending substitution of counsel due to a tender acceptance on the part of Red Cross. Records indicate that at that time, plaintiff's demand was \$185,000, Red Cross offered \$25,000 and ServiceMaster offered \$10,000. The parties reached an impasse and determined not to partake in another conference. Given the path the case has taken, all prior offers are off the table.

(5) **Statement concerning how the Court could facilitate settlement of the case:**

In light of the plaintiff's noncompliance with multiple prior Orders, and her apparent abandonment of the case, the defendants will be renewing their request for dismissal of the matter and do not believe settlement is appropriate, although they appreciate the Court's assistance in this regard.

(6) **Anticipated length of trial and whether the case is to be tried by a jury:**

Should this case proceed to trial, the trial would last approximately one week and would be tried to a jury.

(7) **Statement of whether the parties anticipate filing motions for summary judgment:**

To the extent this case is not dismissed based on the plaintiff's continued disobedience of the Court's Orders, the defendants anticipate filing motions for summary judgment on the issue of liability. Defendants request that the deadline to file summary judgment be held in abeyance

pending your Honor's decision on whether the case should be dismissed at this juncture based upon the information above and the motion that defendants will be filing as soon as possible.

(8) **Any other issues:**

The plaintiff has failed to appear for her continued deposition on three separate occasions (May 20, 2022; May 23, 2022; and June 8, 2022) and failed to appear for her scheduled orthopedic independent medical examination on June 6, 2022. Defendants, therefore, request that any existing deadline that they cannot now meet (i.e. expert discovery and summary judgment) be held in abeyance and if the Court prefers to discuss this at a telephone conference, the parties are available on June 15th @ 4 p.m., June 16th at any time after 12 p.m., and June 17th between 10 a.m. and 12 p.m.

Respectfully Submitted,




Robert Brann, Esq.

CC: All Counsel of Record (*via* ECF)

The pretrial conference currently scheduled for June 15, 2022, is hereby CANCELLED. Defendants shall file any motion to dismiss the complaint for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, no later than **June 24, 2022**. (The Court notes that such a motion may not, under the Court's Rules, be filed as a letter motion --- but must be made as a formal motion in accordance with the Local Rules.) Plaintiff shall file any opposition no later than **July 8, 2022**, and Defendant shall file any reply no later than **July 15, 2022**. The expert discovery deadline and deadline for motions for summary judgment are hereby stayed pending resolution of any motion to dismiss the complaint for failure to prosecute.

SO ORDERED



June 10, 2022